

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET

P.O. BOX 942732

SACRAMENTO, CA 94234-7320

(916) 654-0499

(916) 654-0476 TDD/Relay



N.L. : 18-0594

Date : May 12, 1994

Index: Appeals

To: County California Children Services (CCS) Programs and State
Children's Medical Services (CMS) Branch Regional Offices

Subject: Appeal Guidelines

Introduction

In mid-1992, the state CMS Branch introduced procedural guidelines to implement Title 22 regulations relating to the CCS application process, issuance of Notice of Actions including first-level appeals, and fair hearings. Subsequent to the distribution of the guidelines contained in Numbered Letter 20-0992, several additional policy and procedural issues were identified. As a result, the guidelines presented below have been developed to provide additional information, promote communication, and address the concerns of staff at local and state levels.

I. Who May Appeal

Title 22, California Code of Regulations (CCR), Section 42703, provides that if a client or applicant is not satisfied with a decision, he or she may submit a written request for a first level appeal. This section must not be construed to prohibit an authorized agent from appealing on behalf of the client or applicant. Appellants may, at any time, choose to have another individual represent them. This person may be a parent, legal guardian, legal representative, or any other authorized individual. The absence of a client's or applicant's signature on the written request does not invalidate the appeal. Counties may request a statement of consent from the client or applicant to substantiate the authorization when appropriate.

II. Notice of Action (NOA) Issuance

Independent counties are responsible for issuing NOAs concerning the denial, discontinuation, or modification of program services; benefits; and eligibility (i.e., financial, medical, residential) determinations. Dependent counties are responsible for issuing NOAs concerning the denial or discontinuation, of financial and residential eligibility determinations after consultation with the appropriate state regional office. State regional offices issue NOAs concerning the denial, discontinuation, or modification of medically related services, benefits, or eligibility determinations for dependent counties.

An exception to the responsibility for issuing NOAs occurs in the determination of medical necessity for organ transplant requests. All NOAs related to the denial of medical necessity determinations for organ transplants, excluding renal, shall be issued by the CMS central office medical consultant for all independent counties and state regional offices.

III. Untimely Submitted First Level Appeals

First level appeals submitted beyond the 30-day timeframe, per Title 22, CCR, Section 42703 (a), may not be arbitrarily "dismissed" by CCS personnel. Applicants and clients are entitled to first level appeal decisions even when the requests are not submitted timely. Untimely submitted appeal requests shall be independently evaluated, based on the standards of fairness and reasonableness, to determine if good cause can be established for not meeting the timeframe. These determinations are necessary to ensure consistency within each level of appeal. CCS agencies are to provide an appropriately written response in accordance with Title 22, CCR, Section 42703(e), and either approve or deny the appeal. Additionally, all individuals have the right to request a fair hearing even when the first level appeal decision was denied as untimely.

IV. Fair Hearings

Dependent counties will be represented by the State Department of Health Services' (DHS) legal staff. Independent counties may choose to represent themselves during the fair hearing process and at the scheduled fair hearing or may delegate the task to the State.

If the county provides representation, all legal aspects related to the hearing will be the county's responsibility. This may involve the coordination of staff time between county counsel, medical, and administrative personnel as necessary for research/consultation, evidence and witness preparation, subpoena compliance, preparation of position statements, discovery documentation, and post-hearing briefs including the provision and acquisition of testimony. All necessary communications with the Office of Administrative Hearings and Appeals or appellants will be conducted by county personnel. State regional office staff will continue to be available for policy clarification and technical advice. This includes the provision of documentation and testimony as necessary.

If the State provides representation, a DHS attorney will perform all the legal requirements at no cost to county administration. State regional office staff will review hearing issues to ensure conformance with policy and regulations. Communications will be established with state legal and county program personnel in order to assist in the development of defense

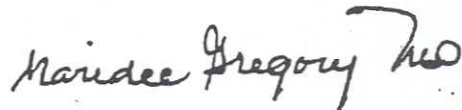
May 12, 1994

strategies and prepare written position statements. County staff will continue to participate by providing related documentation, discussing issues relevant to the hearing request, and may be requested to provide testimony during the hearing.

Upon receipt of a fair hearing request, the Office of Administrative Hearings and Appeals will schedule the hearing date and provide written notification (Enclosure A) to the independent county or state regional office, including the DHS legal office. Dependent counties will be notified by the appropriate state regional office.

Upon receipt of the fair hearing notification, the DHS' Office of Legal Services will assign an attorney to contact the independent county CCS program administrator. DHS staff counsel will establish written communication (Enclosures B and C) for the purpose of determining whether the State or county will provide legal services. State representation may not occur without the return of a signed authorization. Counties shall designate the individual responsible for signing and returning the authorization.

In order to maintain consistency in the application and interpretation of the administrative appeal regulations, I am requesting that future questions or comments relevant to the administration of these procedures be forwarded to George Shahan of my staff for review. Mr. Shahan will ensure that all responses adequately reflect the concerns of state policy and legal staff. Please feel free to contact him at (916) 654-2337.

A handwritten signature in dark ink, reading "Maridee Gregory" followed by a stylized flourish.

Maridee A. Gregory, M.D., Chief
Children's Medical Services Branch

Enclosures

ENCLOSURE A

SAMPLE

BEFORE THE DEPARTMENT OF HEALTH SERVICES

STATE OF CALIFORNIA

ADMINISTRATIVE HEARINGS

| | | |
|-------------------|---|----------------------------|
| In the Matter of: |) | FAIR HEARING APPEAL NO. CS |
| |) | |
| (PATIENT'S NAME) |) | NOTICE OF ACCEPTANCE OF |
| * |) | REQUEST FOR FAIR HEARING |
| * |) | |
| |) | NOTICE OF TIME AND PLACE |
| DATE OF BIRTH |) | OF FAIR HEARING |
| |) | |
| |) | |

TO: (PATIENT'S FAMILY)

TO: *
California Children Services
(INDEPENDENT COUNTY
HEALTH OFFICER)

TO: Robert D. Tousignant
Assistant Chief Counsel
Department of Health Services
Office of Legal Services
714 P Street, Room 1216
Sacramento, CA 95814

We have received and accepted your request for Fair Hearing, dated **. The Fair Hearing will be conducted under the authority of title 22, California Code of Regulations (CCR), section 42705, et seq.

Your Fair Hearing has been set for the hour of ** a.m., on **, at ** before ***, Administrative Law Judge, who has been assigned to conduct the Fair Hearing.

You are entitled to the following:

1) An interpreter if necessary. The Fair Hearing will be conducted in the English language. If you feel that you cannot adequately express yourself in the English language, an interpreter will be provided on your behalf. If you need an

SAMPLE

interpreter please contact Susan Youngren at (916) 322-5599 immediately so that one can be provided at the Fair Hearing.

2) You have the right to have an attorney represent you at the Fair Hearing. If you decide to hire an attorney, you are responsible for paying the attorney.

3) If you desire, you may request a settlement conference at least ten (10) days prior to the Fair Hearing.

4) At any time before the Fair Hearing you may request a continuance (delay). You must show good cause before a continuance will be granted.

If you have any questions or need additional information, please call this office.

Date: _____

Taylor S. Carey
Assistant Chief Counsel
923 12th Street, Suite 201
Sacramento, CA 95814
(916) 322-5603

cc: Maridee Gregory, M.D., Chief
Children's Medical Services Branch
714 P Street, Room 350
Sacramento, CA 95814

INDEPENDENT COUNTY
ATTN: CCS PROGRAM ADMINISTRATOR

APPROPRIATE (STATE REGIONAL CCS OFFICE)
ATTN: MEDICAL CONSULTANT

SAMPLE

ENCLOSURE B

XXXXXXXXXX XXXXXX
CCS Program Administrator
California Children Services
P.O. Box 1139
Anytown, CA XXXXX

PATIENT'S NAME: _____
FAIR HEARING NO.: CSX-XXXX-XXX
DATE OF HEARING: ____/____/____

Dear XXXXXXXXXXXXXXXXXX:

This is to inform you that the Department of Health Services has received notification of a scheduled fair hearing for the individual referenced above and I am the attorney assigned to the matter. Your county may choose to provide the legal services necessary for representation or allow me to proceed. However, in order for our Department to assume the responsibility of representing your county in this fair hearing, I will need the enclosed "State Representation Agreement" to be reviewed, signed, and returned directly to me.

Additionally, in order to prepare this matter for the hearing, I will need copies of the relevant records relating to the decision of the first level appeal. If, in addition to yourself, there were other staff members involved in this matter, I will need their names as well. Should your county wish to delegate legal representation to the State, I will need to receive all documentation as soon as possible. Please forward this documentation to me at the address identified on the enclosure no later than fifteen working days prior to the date of the hearing. If you have not already done so, please send copies of these documents to the appropriate CCS state regional office. I will contact you in the near future to discuss this appeal.

Thank you for your cooperation in this matter.

Sincerely,

Robert D. Tousignant
Assistant Chief Counsel

XXXXXXXXXXXXXXXXXX
Staff Attorney

Enclosure

cc: Maridee A. Gregory, M.D., Chief
Children's Medical Services Branch
Department of Health Services
714 P Street, Room 350
Sacramento, CA 95814

Regional Office (State CCS)
Attention: Medical Consultant

SAMPLESTATE REPRESENTATION AGREEMENT
INDEPENDENT COUNTY

(ANY) COUNTY, California Children Services program ("County"), hereby designates the State Department of Health Services ("State") to represent and defend the County in the fair hearing appeal regarding the denial, discontinuation, or modification of program services; benefits; or eligibility for PATIENT'S NAME, appeal number CSX-XXXX-XXX. To the extent that this arrangement may be considered to create any conflicts of interest between the State and County, County hereby waives such conflicts. State will provide legal counsel, if authorized, and may settle any or all claims if the State believes it is proper with respect to this appeal. County agrees to be bound by the outcome of the appeal, whether it is a negotiated settlement or a final decision by the Director of Health Services, and agrees to cooperate fully with representatives from the State in the preparation and presentation of the case.

(Signature of County Official)

(Date)

COUNTY REPRESENTATION

This is to confirm that this County has decided not to authorize the Department of Health Services to represent/defend the County in this fair hearing.

(Signature of County Official)

(Date)

RETURN ORIGINAL TO: DEPARTMENT OF HEALTH SERVICES
OFFICE OF LEGAL SERVICES
Attention: _____
Staff Attorney
714 P Street, Room 1216
Sacramento, CA 95814

SEND COPY TO: _____ Regional Office (State CCS)
Attention: Medical Consultant